IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision 39 of 1991

Date of decision: 21.3.2007

Mehar Singh …Petitioner

Versus

Jarnail Singh etc. …Respondents

Present: Mr Baljinder Singh, Advocate for the petitioner.
None for the respondents.

S.S. SARON, J (Oral).

This criminal revision petition has been filed against the order dated 29.10.1990 passed by the learned Additional Sessions Judge, Ludhiana whereby the respondents have been discharged in respect of the offences under Sections 326/324/323/379 read with Section 149 IPC.

Petitioner – Mehar Singh filed a complaint against the respondents alleging that there was civil litigation pending between the complainant and Sadhu Singh son of Prem Singh in the Courts of Deputy Commissioner, Ludhiana, Tehsildar Ludhiana and also before the learned Sub Judge Ist Class, Ludhiana. The other accused namely Jarnail Singh, Shamsher Singh, Baljinder Singh and Hardev Singh were helping Sadhu Singh – accused in the said litigation. On 8.6.1986 at about 8 p.m., the complainant was going to his house from the side of village Noorpur Bet. When he reached near the drain of Tootanwala and was at a distance of about 3 Killas from village Garha, Jarnail Singh armed with Takua, Shamsher Singh armed with Gandasi, Sadhu Singh armed with Sua, Hardev

Singh armed with Takua and Baljinder Singh armed with Gandasi attacked him. All the accused raised Lalkaras that the complainant was not leaving the litigation and they would teach him a lesson. On that, Jarnail Singh – accused gave a Takua blow on the head of the complainant. The complainant, in order to save himself, raised his hand and the Takua hit him on the finger of his left hand. As a result thereof, the index finger of the complainant was cut. Shamsher Singh – accused gave a Gandasi blow, which hit on the right leg of the complainant. The complainant fell on the ground. Jarnail Singh and other accused also gave kick strikes on the chest of the complainant. Jarnail Singh forcibly took away Rs 157/- from the shirt pocket of the complainant. Hardev Singh forcibly took away the gold ring which the complainant was wearing on his right hand. The complainant raised hue and cry. The occurrence was witnessed by Kehar Singh and Ranjit Singh who also came there. They rescued the complainant and the accused ran away from the spot with their respective weapons towards the fields. Kehar Singh and Ranjit Singh took the complainant to his house. The complainant due to fear of the accused did not go to Civil Hospital, Ludhiana at night. In the morning of 9.6.1986, the complainant was taken to Civil Hospital, Ludhiana by Pritpal Singh and Teja Singh. The complainant was medico-legally examined at the Civil Hospital, Ludhiana. The Assistant Sub Inspector of Police Post Ladowal, Ludhiana came at the Civil Hospital and recorded the statement of the complainant but no action was taken as the accused were stated to be influential persons. Accordingly, the complaint was filed. The complainant examined himself as PW1. Besides, he examined Dr KS Aujla as PW2 and Kehar Singh as PW3. The learned trial Magistrate, vide his order dated 10.10.1986 summoned the accused. Thereafter, the complainant – Mehar Singh, for the purposes of

charge, examined himself as PW1, Kehar Singh as PW2, Hari Chand as PW3 and Dr KS Aujla ENT Specialist, Guru Tegh Bahadur Hospital, Ludhiana as PW4. Besides, he also tendered in evidence the medico-legal report. Dr KS Aujla (PW4) deposed that on 9.6.1986 while working as EMO, Civil Hospital, Ludhiana, he had examined Mehar Singh – complainant. Injury No.1 on the dorsum of middle phalanx of left ring finger near distal MCP joint, was declared to be grievous in nature. The other three injuries on the person of the complainant were found simple in nature. Injuries No.1 and 2 were caused by sharp-edged weapon while the others with a blunt weapon. The MLR report was tendered in evidence as Ex PA and the pictorial diagram indicating the seats of injuries was exhibited as Ex PA/1.

The learned trial Magistrate after considering the evidence on record prima facie found that a case under Sections 326/324/323/379 read with Section 149 IPC was made out against the accused. Accordingly, vide order dated 14.5.1990, they were ordered to be charged for the said offences. The respondents were charge sheeted by the learned trial Magistrate. Aggrieved against the order of the learned trial Magistrate, the respondents preferred a revision petition before the learned Sessions Judge Ludhiana. The learned Additional Sessions Judge, to whom the case was assigned, after considering the evidence and material on record, came to the conclusion that the evidence produced by the complainant was infirm on more than one count and in the face of the said infirmities, no conviction was possible. Therefore, the order framing charge would be an exercise in futility. Accordingly, the revision petition was accepted and the respondents were discharged. The said order discharging the respondents, as already noticed, is assailed by way of the present revision petition.

Learned counsel for the petitioner has contended that the learned Additional Sessions Judge gravely erred in discharging the respondents. It is submitted that the learned Additional Sessions Judge has not appreciated the evidence in the case. In fact, at the stage of framing the charge, it is not to be seen whether the guilt of the accused would be established or not. It is further submitted that the learned trial Magistrate, after considering the material on record, had rightly ordered the framing of charge against the respondents and the said order was not liable to be interfered with by the learned Additional Sessions Judge, in exercise of his revisional jurisdiction.

No one on behalf of the respondents has appeared. As per office report, Jarnail Singh (respondent-1) and Sadhu Singh (respondent-2) have died. Registered AD letters issued to respondents-3, 4 and 5 for 21.3.2007 have been received back with the report that they were not found present at the given addresses.

I have given my thoughtful consideration to the matter.

It may appropriately be noticed that injury No.1 which is on the dorsum of middle phalanx of left ring finger near the distal MCP joint on the person of petitioner - Mehar Singh, is attributed to Jarnail Singh (respondent-1). It is alleged in the complaint that Jarnail Singh – accused gave a Takua blow on the head of the complainant. The complainant, in order to save himself, raised his hand and the Takua hit on the fingers of his left hand. As a result of which, the index finger was cut. Jarnail Singh who is attributed the injury on the finger of the complainant, as has already been noticed, has since died. Dr KS Aujla who appeared in the case as PW2 and then as PW4 has opined that possibility of injury No.1 having been caused by a friendly hand could not be ruled out. It is further stated that injury

No.2 is also possible by friendly hand. The said injury is an incised injury on the right leg below the middle and is attributed to Shamsher Singh (respondent-4). The said injury though is stated to have been caused with sharp edged weapon is simple in nature. Injury No.3 on the person of the complainant is mentioned as complain of pain on the right side of chest upper part. There was no external mark. It is also stated that injury No.4 i.e. linear abrasion 1/2" long on the dorsum of middle phalanx of left middle finger on the person of the complainant could be possible by fall on hard surface with the dorsum of the hand touching the hard surface. Though at the stage of framing the charge, the evidence is not to be appreciated to see whether a finding of guilt can be recorded, however the Court can always sift and weigh the evidence for the limited purpose of finding out whether a prima facie case has been made out for framing the charge. The Court, as is well known, does not act merely as a mouth piece or a post office for the prosecution. The total effect of the material and evidence before the Court are to be considered. Besides, it is also appropriate to note that the present is a complaint case which has been initiated on the basis of a complaint other than a Police report. Therefore, it cannot be said that the learned Additional Sessions Judge in considering the evidence and material on record while passing the impugned order has in any manner exceeded his jurisdiction by discharging the respondents.

Keeping in view the totality of the circumstances as also the fact that two of the respondents namely Jarnail Singh who is attributed the main injury and Sadhu Singh, have died during the pendency of the revision petition and the others have been attributed only simple injuries, no useful purpose would be served in interfering with the order passed by the learned Additional Sessions Judge.

In view of the foregoing discussions, there is no merit in this petition and the same is accordingly dismissed.

21.3.2007. (S.S.SARON)
ASR JUDGE